

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: BRIDGESTONE/FIRESTONE, INC.,	)	
ATX, ATX II and WILDERNESS TIRES	)	MDL DOCKET NO. 1373
PRODUCTS LIABILITY LITIGATION	)	IP 00-9373-C-B/S
	)	
	)	
_____ Robyn W. Smith and Deborah K. Smith,	)	CASE NO. IP 00-5063-C-B/S
v.	)	
Bridgestone/Firestone, Inc., et al.	)	

**DEFENDANT BRIDGESTONE/ FIRESTONE, INC.'S  
ANSWER AND AFFIRMATIVE DEFENSES**

For its answer and affirmative defenses, defendant Bridgestone/Firestone, Inc. f/k/a/ The Firestone Tire & Rubber Company ("Firestone") states as follows:

**GENERAL ALLEGATIONS**

1. Firestone admits that it designs, manufactures, and sells motor vehicle tires in the United States. Firestone states that it is an Ohio corporation with its principal place of business in Tennessee. Firestone states that The Firestone Tire and Rubber Company was an Ohio corporation with its principal place of business in Illinois and that through a merger and a name change it is now known as Bridgestone/Firestone, Inc. Firestone states that Bridgestone Corporation is a corporation formed under the laws of Japan. Firestone objects to the use of the term "defendants" to refer to both corporations and Firestone states that whenever it answers to any allegations against the Firestone defendants, it is answering only on behalf of Bridgestone/Firestone, Inc. f/k/a/ The Firestone Tire & Rubber Company, not Bridgestone Corporation. Nothing in this answer should be construed as an answer on behalf of Bridgestone Corporation. Firestone denies the remaining allegations of paragraph 1.

2.-3. Firestone is without knowledge or information sufficient to support a belief as to the truth of the allegations contained in paragraphs 2 and 3 of Plaintiffs' Complaint.

4. Firestone does not contest jurisdiction in the Southern District of Indiana. Firestone is without knowledge or information sufficient to support a belief as to the truth of the remaining allegations contained in paragraph 4 of Plaintiffs' Complaint.

5.-9. Firestone is without knowledge or information sufficient to support a belief as to the truth of the allegations contained in paragraphs 5, 6, 7, 8, and 9 of Plaintiffs' Complaint.

10.-11. Firestone denies the allegations directed to it contained in paragraphs 10 and 11 of Plaintiffs' Complaint.

12.-13. Firestone is without knowledge or information sufficient to support a belief as to the truth of the allegations contained in paragraphs 12 and 13 of Plaintiffs' Complaint.

14.-15. Firestone denies the allegations directed to it contained in paragraphs 14 and 15 of Plaintiffs' Complaint.

### **FIRST AFFIRMATIVE DEFENSE**

#### **Failure to State a Claim**

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

### **SECOND AFFIRMATIVE DEFENSE**

#### **Preemption**

Plaintiffs' claims are barred, in whole or in part, by the federal legislation and regulations governing tires, including the Motor Vehicle Safety Act and the regulations promulgated by the National Highway Traffic Safety Administration.

### **THIRD AFFIRMATIVE DEFENSE**

#### **Primary Jurisdiction**

Plaintiffs' claims fall within the primary jurisdiction of the National Highway Traffic Safety Administration.

### **FOURTH AFFIRMATIVE DEFENSE**

#### **Incurred and Assumed Risk**

Plaintiffs' claims are barred because Plaintiffs incurred or assumed the risks of which they complain in this action.

### **FIFTH AFFIRMATIVE DEFENSE**

#### **Setoff**

To the extent Plaintiffs have been compensated for the alleged damages by receiving payment from other persons or entities the amount of any such compensation should be set off against any recovery plaintiffs may receive in this action.

### **SIXTH AFFIRMATIVE DEFENSE**

#### **Nondefective Product**

The tire which allegedly caused injuries or damage to Plaintiffs was reasonably fit for the uses for which it was intended.

### **SEVENTH AFFIRMATIVE DEFENSE**

#### **Non-Party**

The injuries or damages of which Plaintiffs complain were caused in whole or in part by non-parties whom plaintiffs have failed to join in this action.

## **EIGHTH AFFIRMATIVE DEFENSE**

### **Waiver and Estoppel**

Plaintiffs have waived any and all claims which they seek to assert in this action and are estopped both to assert and to recover upon such claims.

## **NINTH AFFIRMATIVE DEFENSE**

### **Failure to Mitigate Damages**

Plaintiffs have failed, in whole or in part, to mitigate their alleged damages.

## **TENTH AFFIRMATIVE DEFENSE**

### **Statute of Limitations and Repose**

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations and/or repose.

## **ELEVENTH AFFIRMATIVE DEFENSE**

### **State of the Art**

The product at issue was in compliance with all federal, state and local codes, standards, regulations, specifications and statutes regarding the manufacture, sale and use of the tire at all times pertinent to this action.

## **TWELFTH AFFIRMATIVE DEFENSE**

### **Product Misuse**

Plaintiffs are not entitled to recover to the extent any alleged damages or injuries were caused by the misuse, abuse, or failure to properly maintain or care for the product.

### **THIRTEENTH AFFIRMATIVE DEFENSE**

#### **Contributory or Comparative Negligence**

Firestone denies that it was negligent in any way in connection with the design, manufacture or sale of its products but as to any and all acts of negligence alleged in the Complaint, Firestone affirmatively alleges that plaintiffs' contributory negligence, incurred risk, comparative fault and other fault caused the damages sought in this action, and they are more than 50% at fault in causing such damages and therefore plaintiffs cannot recover in this action or the damages should be diminished in proportion to the amount of fault attributable to them.

### **FOURTEENTH AFFIRMATIVE DEFENSE**

#### **Constitutionality of Punitive Damages**

Plaintiffs' request for punitive damages cannot be sustained because an award of punitive damages under state law by a jury that (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages awarded, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part on the basis of invidiously discriminatory characteristics, including without limitation the residence, wealth, and corporate status of Firestone, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, (5) is not properly instructed regarding Plaintiffs' burden of proof with respect to each and every element of a claim for punitive damages, or (6) is not subject to trial court and appellate judicial

review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards violates Firestone's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by the applicable state constitutions, and would be improper under the common law and public policies of the states.

Plaintiffs' request for punitive damages also cannot be sustained because the applicable state laws regarding the standards for determining liability for and the amount of punitive damages fail to give Firestone prior notice of the conduct for which punitive damages may be imposed and the severity of the penalty that may be imposed and are void for vagueness in violation of Firestone's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and applicable state constitutions.

Further, plaintiffs' request for punitive damages against Firestone cannot be sustained, because an award of punitive damages exceeding the limits authorized by the criminal laws or other comparable laws of the applicable state would violate Firestone's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the applicable state constitutions, and would be improper under the common law and public policies of applicable state law.

Plaintiffs' request for punitive damages against Firestone also cannot be sustained because any award of punitive damages under applicable state law, which would be penal in nature, without affording Firestone the same protections that are afforded to all criminal defendants, including the protection against unreasonable searches and seizures, self-incrimination, and the right to confront adverse witnesses, a speedy trial, and the effective assistance of counsel, would violate Firestone's

rights guaranteed under the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States Constitution, and applicable state constitutions, and would be improper under the common law and public policies of applicable state law.

Firestone further states that plaintiff's Complaint fails to state sufficient facts to support the prayer for punitive damages against Firestone.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

##### **Barred Claims**

Plaintiffs' claims under a negligence theory are barred by Indiana Product Liability Act.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

##### **Misuse by Others**

Plaintiffs' claims may be barred because the physical harm alleged by plaintiffs in this action resulted from the misuse of the tire at issue by some person not reasonably expected by Firestone at the time the tire at issue in this action was sold or otherwise conveyed to another party

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

##### **Intervening Acts**

The damages complained of may have been the result of the intervening actions of others and were not proximately caused by the actions or omissions of Firestone.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

##### **Incurred Risk by Others**

Plaintiffs' claims may be barred because third parties knew of the defects alleged in the Complaint and were aware of the danger and nevertheless proceeded unreasonably to make use of such product.

## **NINETEENTH AFFIRMATIVE DEFENSE**

### **Modification or Alteration**

Plaintiffs' claims may be barred because the physical harm complained of was caused by a modification or alteration of the product at issue made by a person after the delivery to the initial user or consumer which modification or alteration was the proximate cause of the physical harm complained of by plaintiffs and such modification or alteration was not reasonably expectable by Firestone.

## **TWENTIETH AFFIRMATIVE DEFENSE**

### **Joint Liability Abolished**

The doctrine of joint and several liability has been statutorily abolished in Indiana in a case such as this, and, should plaintiffs prevail against Firestone, Firestone's liability is several and is limited to its own actionable segment of fault, if any.

## **TWENTY-FIRST AFFIRMATIVE DEFENSE**

### **Contribution**

Any physical harm alleged can be attributed to several causes and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

## **TWENTY-SECOND AFFIRMATIVE DEFENSE**

### **Notice of Additional Affirmative Defenses**

Firestone hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its Answer to assert such defenses.



**WHEREFORE**, Firestone demands judgment dismissing the Complaint with costs, attorney's fees to the extent recoverable, disbursements and such other and further relief as this Court may deem just and proper.

DATED: December 19, 2000 Respectfully submitted,

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Counsel for Defendant, Bridgestone/Firestone, Inc.

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that a copy of the foregoing has been served upon the following counsel of record by depositing a copy of the same in the United States mail, first class postage prepaid this 19th day of December, 2000 and addressed as follows:

William E. Winingham  
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Wilson Kehoe & Winingham  
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Mark J. R. Merkle

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